(2015) 04 DEL CK 0120

In the Delhi High Court

Case No : ITA 143/2015 and C.M. Appl. 3222 of 2015

Uday Punj — APPELLANT

Vs

Commissioner of Income Tax (Central)-3 — RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:
Income Tax Act, 1961 — Section 260A, 271(1)(c), 43(5), 43(5)(b)

Citation : (2015) 04 DEL CK 0120

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Rakesh Gupta, Poonam Ahuja and Rohit Kumar Gupta, for the Appellant; Suruchii Aggarwal, Sr. SC and Abhishek Sharma, Advocates for the Respondent

Judgement

1. The question of law which arises for consideration in this appeal directed against an order of the Income Tax Appellate Tribunal (ITAT) dated 24.04.2014 is whether the penalty under Section 271(1)(c) of the Income Tax Act, 1961 (hereafter referred to as "the Act"), for concealment of material particulars to the tune of Rs. 54,28,629/- was warranted.

2. The assessee in its return for A.Y. 2007-08 had inter alia claimed loss of Rs. 1,61,27,836/- as Short-Term Capital Loss, on account of its trade in commodity derivatives. The Assessing Officer (AO) treated this as a "speculative loss" and disallowed this set of claims as against the profit. The AO also treated Rs. 86,53,403/- on account of F&O derivatives as "business income", disallowing the capital loss claim. Forming the opinion that this claim was based upon concealment of facts and material particulars, the AO initiated proceedings under Section 271(1)(c) of the Act. It is not in dispute that the assessment was finalized and the additions were ultimately sustained; the assessee accepted them.

3. The assessee''s appeal to the CIT (A) was partly accepted in the sense that the penalty order originally imposed was directed to be reduced. The further

appeal to the ITAT however, was not successful. The assessee, as a consequence, has preferred the present appeal under Section 260A. It is argued that the question whether the nature of loss in this case was speculative loss or not was a matter of considerable debate. In substantiation of this proposition, learned counsel relied upon a decision of the Gujarat High Court in Commissioner of Income Tax Vs. Navinchandra and Co., (2014) 222 TAXMAN 156 . The Gujarat High Court had inter alia observed as to whether such losses from commodities traded in stock exchanges which were not declared to be eligible at that time could be treated as speculative transactions was a matter of debate since there was a plurality of views amongst different Benches of the ITAT. Learned counsel for the assessee relied upon the decision of the Mumbai Bench of the ITAT in ACIT v. Arnav Akshay Mehta 2012 (53) SOT 581 . The Mumbai Bench had then ruled that the notification of the concerned commodity exchange, i.e. MCX though made in 2009 would relate back to the point of time when Section 43(5) was introduced to qualify for eligible treatment of such losses/profits. The assessee lastly relies upon a Division Bench ruling of this Court in Commissioner of Income Tax Vs. Auric Investment and Securities Ltd., (2009) 310 ITR 121 . In that case, the ITAT had held in favour of the assessees. On the revenue''s appeal, it was observed that:

"14. So, it is clear from the record that all the requisite information as required by the Assessing Officer, was furnished by the assessee. There is nothing on record to show that in furnishing its return of income, the assessee has either concealed its income or has furnished any inaccurate particulars of income. The mere treatment of the business loss as speculation loss by the Assessing Officer does not automatically warrant inference of concealment of income. The assessee did not conceal any particulars of income, as he filed full details of the sale of shares. In any case, it cannot be said that the assessee has concealed any particulars so far as its computation of income is concerned and as the such provisions of Section 271(1)(c) of the Act are not attracted in this case and we do not find any infirmity in the reasoning given by the Tribunal.

15. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law."

4. Learned counsel for the revenue urges that the AO''s order was based upon the assessee''s original claim of capital loss. Subsequently, the treatment as business loss was accepted. In these circumstances, the AO was justified in treating the claim itself as an inaccurate particular or a material error which could potentially result in revenue loss.

5. This Court has considered the submissions. When the present controversy arose, there was some divergence of opinion as to the character of such transactions and whether they constitute speculative loss. The introduction of

Section 43(5)(b) and related provisions brought in its wake certain complications in that not all stock exchanges were notified to deal with commodities. The Mumbai Bench decision of ITAT in Arnav (supra) clarified that subsequent recognition or notification of the stock exchange would relate back to the point of time when the legislation was amended. Having regard to these facts, the Court is of the opinion that the ratio in Auric (supra) squarely applies to the circumstances of the present case. The imposition of penalty was not warranted. It is accordingly directed to be deleted and the impugned order of the ITAT is set aside.

The appeal is allowed in the above terms.

